

March 9, 2021

Name: Harold G. Fortson

RE: Bill H 5927

For

To Whom it May Concern:

My father, Harold A. Fortson (deceased), a World War II decorated veteran, was a resident at the RIVH from August 2008 through August of 2015. He is one of the individuals who have been identified by the RIVH as wrongfully being charged maintenance fees while he was 80% service-connected disabled.

While the RIVH has recognized their error and committed to a refund of the fees (without interest) from February 2013 thru the end of his stay, the issue of his maintenance fees before those dates has not been addressed. Other than a rules change in how those fees were to be paid by the Veterans Administration to the RIVH, it appears the same rules for veterans who were 70% or more service-connected disabled were in place: *"the State home is prohibited from charging a veteran for nursing home care when VA pays the higher per diem rate based on service connection because VA's payment constitutes payment in full for the care provided (see 38 U.S.C. 1745(a)(3))."* Attached to this letter is a document sent to Senator Sheldon Whitehouse's office outlining the details of my family's position.

The simple facts are that deserving veterans were deprived of funds that could have been used for their benefit and their families. During those years, my mother lived on 20% of the income they had as a couple along with the family's savings. As a result of this error, we have had to go through the expense of reopening my father's estate and frankly, it is like reliving his passing all over again.

As a veteran myself, I applaud this committee for both recognizing and trying to right this wrong while trying to bring some justice and faith in the system through the oversight of the legislature. I trust that through your actions, no veteran's family will have to worry about this happening again.

Respectfully,

Harold G. Fortson

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February 17, 2021

**Office of United States Senator Sheldon Whitehouse
170 Westminister Street, Suite 200
Providence, RI 02903**

Re: Veterans Maintenance Fee Inquiry

Senator Whitehouse:

The following inquiry is related to maintenance fees paid by Mr. Harold A. Fortson who was a resident at the Rhode Island Veterans Home (RIVH) and housed in the Alzheimer's unit from August 2008 until August of 2015.

Issue: Was Mr. Fortson, who was classified as 80% service-connected disabled, required to pay 80% of his income in maintenance fees to the RIVH throughout the entirety of his stay? Was the Department of Veterans Affairs already paying RIVH a higher per-diem rate for Mr. Fortson? If so, Mr. Fortson's estate should be refunded maintenance fees for the length of his stay.

Background:

- Mr. Fortson was a resident at the RIVH from August 2008 through August of 2015.
- A letter (VA Rebate Ltr 2021 attached) sent on Jan 14, 2021 by the RIVH to Mr. Fortson's family stated that he was owed a refund of maintenance fees from Feb 2, 2013 through August 2015 when he passed away. No reason was given in the letter for the refund other than the approval of a U.S. Department of Veterans Affairs Corrective Action Plan. There is no dispute that these monies are owed to Mr. Fortson's estate.
- Based on a report by WPRI News Investigative Reporter Tim White (<https://www.wpri.com/target-12/a-little-too-late-ri-veterans-home-families-repaid-millions-after-improper-billing/>), the family subsequently learned that a whistleblower had flagged the issue of improperly charging maintenance fees. This raised a red flag for the family, who wondered why Mr. Fortson's maintenance fees from the time he first resided at the RIVH in 2008 was not eligible for the same referenced refund.
- As noted in the Federal Register: April 2009 Federal Register, Federal Register / Vol. 74, No. 81 / Wednesday, April 29, 2009 / Rules and Regulations 19429:
 - **Compensation:***We know of no basis for treating VA compensation differently from other income or other funds of a resident except that the State home is prohibited from charging a veteran for nursing home care when VA pays the higher per diem rate based on service connection because VA's payment constitutes payment in full for the care provided (see 38 U.S.C. 1745(a)(3)).*
Source: <https://www.govinfo.gov/content/pkg/FR-2009-04-29/pdf/FR-2009-04-29.pdf>
Applicable pages attached as Fed Register Doc pages.

- Research indicates RIVH was collecting the higher per diem rate prior to February 2013. See attached VA 10-5588 form.
- According to WPRI Reporter Tim White: *When asked by WPRI why the state was only looking back to 2013, RI spokesperson Meghan Connelly responded "On December 6, 2012, the U.S. Department of Veterans Affairs (VA) published an interim final rule, 38 CFR 51.41(C)(2). This change in the rule became effective February 2, 2013. Therefore, the reimbursements are effective as of February 2, 2013, for those impacted residents."*
- However, research shows the law, 38 CFR 51.41(C)(2) (attached as 38 CFR Part 51) was in effect prior to 2012; Congress passed the law in 2006 to provide a higher prevailing per diem rate for Veterans with 70% or more service-connected disability, and or requiring nursing home care for a VA-adjudicated disability. The State of Rhode Island and/or RIVH was receiving the higher per-diem rate for Veterans during the period of 2008-February 2012.

The 38 CFR 51.41(C)(2) document summary states the purpose of the document is to *"implement a change in the law that revises how the VA will pay for care provided to these veterans and authorizes VA to use provider agreements to pay for such care."*

The rule within the document states: *"(1) State homes must sign an agreement to receive payment from VA for providing care to certain eligible veterans under a State home care agreement."* This appears to pertain to any dates moving forward and does not negate any rules that were previously in place, especially those related to maintenance fee payments for veterans with 70% service-connected disabilities.

- Moreover, the referenced interim change 38 CFR 51.41(C)(2) only appears to clarify how far back the States can seek retroactive compensation.

Why was 80% service-connected disabled Mr. Harold A. Fortson being charged a maintenance fee by the RIVH between August 2008 and January 2013, when it appears rules and regulations already in place contradict the action?

What materially changed to justify the February 2013 cutoff date for Mr. Fortson's reimbursement when it appears the RIVH had been receiving the higher per-diem rate for his maintenance fees and the reason stated by RIVH only pertained to the requirements for compensating homes going forward?

The Fortson family appreciates a thorough review of this matter at both the State and Federal level.

Respectfully,

Harold G. Fortson

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